

Notice of Allowability

Application No.

10/505,141

Examiner

Timothy C. Vanoy

Applicant(s)

TSUKUMA ET AL.

Art Unit

1754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Amendment filed on Jan. 18, 2007.
2. ☒ The allowed claim(s) is/are 1-6 and 8-12.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

Timothy C. Vanoy
Timothy C. Vanoy
Primary Examiner
Art Unit 1754

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance: Claims 1 and 12 and the claims dependent thereon and/or which incorporate the limitations of claims 1 and/or 12 have been allowed because the applicants have shown that the average diameter of the primary particles is different and this inherently produces secondary particles made up of aggregated primary particles which have open voids having a different average diameter from that set forth in at least applicants' claims 1 and 12. The average diameter of the applicants' primary particles ranges from 0.5 to 4 micrometers (please see applicants' claim 2), whereas the average diameter of the primary particles of Japan Patent Document No. 2002-53,321 A ranges from 0.1 to 0.2 micrometers (please see paragraph no. 0015 in the English translation of Japan Patent Document No. 2002-53,321 A). Since the average diameters of the primary particles drastically differ, it can not be assumed or concluded that the secondary particles resulting from the aggregation of the primary particles will inherently have the same open voids with the same average diameter or same total volume that are set forth in applicants' claim 1. Different sized primary particles will inherently produce aggregates with different open voids having different diameters and different total volumes. Since it is reasonably expected that the secondary particles of the lithium manganese composite are different between the applicants' claims and Japan Patent Document No. 2002-53,321 A, then applicants' claim 12 is also patently distinct from Japan Patent Document No. 2002-53,321 A.

Art Unit: 1754

Claim 6 and the claims dependent thereon have been allowed because applicants' claim 6 requires the step of pulverizing the slurry, which is the diametric opposite of what is taught in paragraph no. 0008 in the English translation of Japan Patent Document No. 2002-53,321 A which teaches "without a pulverization process."

Claim 8 and the claims dependent thereon have been allowed because neither Japan Patent Document No. 2002-53,321 A or U. S. Patent 6,706,444 B1 teach or suggest the limitations of these claims.

Any comments considered necessary by the applicants must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

RESPONSE TO 116 AMENDMENT

The 116 Amendment filed on Jan. 18, 2007 has been entered.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy C. Vanoy whose telephone number is 571-272-8158. The examiner can normally be reached on Mon-Fri 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman, can be reached on 571-272-1358. The fax phone

Art Unit: 1754

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Timothy C Vanoy
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Primary Examiner
Art Unit 1754

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